

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/05-01/08**
Date: **07 November 2014**

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public

**Public redacted version of "Prosecution's Response to Defence Request for Recall of
Witness P-178", 31 October 2014, ICC-01/05-01/08-3180-Conf**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. On 29 October 2014, the Defence filed a request ("Defence Request")¹ for the recall of Witness P-178 ("P-178"). The Defence Request followed the testimony of Witness P-169 ("P-169"), who was recalled by Trial Chamber III ("Chamber").² The Defence argues that the recall is warranted on the grounds of P-178's central role; as a remedy for late disclosure; P-178 being [REDACTED]; due to his relationship with [REDACTED]; to explore the veracity of P-178's [REDACTED] and to further check on the general credibility of P-169.

2. The Office of the Prosecutor ("Prosecution") opposes the Defence Request. The Chamber has already considered the issue of recalling P-178 and has ruled against it.

3. The Defence substantiates its Request by making incomplete readings of the disclosed information and misquotations of P-169's recent testimony. P-169 has properly addressed the Defence's concerns regarding the allegations and issues contained in his letters. The Defence Request also embarks into a discussion of witness management and security issues, particularly with regard to [REDACTED], which fall within the Victims and Witnesses Unit ("VWU") mandate and obligations, and have no bearing on the recalling of P-178.

4. The Defence has not identified any ground justifying a recall of P-178. The Defence has not proven any substantial change, which would warrant a different Chamber's ruling. The Defence Request therefore amounts to a request for the Chamber to reconsider its prior decision and, as such, should be rejected.

¹ ICC-01/05-01/08-3177-Conf, Defence request for recall of Witness P-178, 29 October 2014.

² P-169 testified in closed session from 22 until 24 October 2014.

II. Confidentiality

5. The Prosecution requests that the Chamber receive this response as “confidential” pursuant to Regulation 23*bis* of the Regulations of the Court, as it relates to a document that was filed with this classification.

III. Submissions

6. The Chamber has already rejected the request to recall P-178. The Chamber, *inter alia*, found that it was “not convinced by the Defence's assertion that the witnesses [REDACTED]. Indeed, the attempted contact allegedly initiated by P-178 took place long after the witnesses testified. Moreover, the witnesses who could be contacted by the Prosecution denied having attended any such meeting. Accordingly, the Chamber ruled out the Defence's assertion regarding [REDACTED] witnesses.”³

7. The Chamber also set the parameters for a witness to be recalled: “[w]hile [the Chamber] will give due consideration to any request to recall a witness, it will not recall a witness simply because a party has obtained material after completion of the witness's testimony that it could have obtained through the exercise of reasonable diligence before the testimony.” The Chamber further held that “the requesting party should demonstrate good cause to recall a witness. In addition, “judicial economy demands that recall should be granted only in the most compelling circumstances where the evidence is of significant probative value and not of a cumulative nature.”⁴ It further noted the Defence's submission that “disclosure of the requested information “put into admissible form for reception into evidence, may well obviate the need for the recall of any witnesses”.⁵

³ ICC-01/05-01/08-2924-Conf, para.34.

⁴ ICC-01/05-01/08-2924-Conf, para.35.

⁵ ICC-01/05-01/08-2924-Conf, para.36.

8. The Chamber reopened the presentation of evidence for the limited purpose of hearing P-169 on issues related to the allegations contained in the 5 August 2014 Letter including issues of witness credibility.⁶ This, however, does not allow further unsubstantiated requests to reopen the presentation of evidence.

9. Contrary to the Defence assertions, the recent disclosure has not provided any real new evidence to the Defence. The letters of 11 June 2014 and 5 August 2014 are similar to the previously disclosed letters dated 7 and 8 of June 2013, which were already available to the Defence and considered by the Chamber when it ruled against the recall of P-178.⁷

10. The Defence also had the information regarding the preparation of the [REDACTED] prior to the VWU's Report of 27 June 2014. That information was part of the Prosecution's Filing 2827 which was made available to the Defence since at least 7 November 2013.⁸

11. Filing 2827 also incorporated relevant information with regard to P-178's financial concerns and [REDACTED].⁹

12. The Defence also refers to the late disclosure of the information provided in CAR-OTP-0083-1489_R01 to justify its request.¹⁰ However, this information too, has essentially been made available to the Defence since at least 7 November 2013 through Filing 2827.¹¹

⁶ ICC-01/05-01/08-3155, para.8.

⁷ The two letters were provided to the Defence since at least 7 November 2013, through ICC-01/05-01/08-2827-Conf-Red. The Chamber's decision, ICC-01/05-01/08-2924-Conf rejecting the Defence's request to recall P-178 was issued on 18 December 2013.

⁸ ICC-01/05-01/08-2827-Conf-Red, 7 November 2013. See also ICC-01/05-01/08-2827-Conf-Red2, para.6.

⁹ ICC-01/05-01/08-2827-Conf-Red2, para. 9; See also paras. 13-14 [REDACTED].

¹⁰ ICC-01/05-01/08-3177-Conf, para.16.

¹¹ ICC-01/05-01/08-2827-Conf-Red2, para.9.

13. The Defence argues that the recall of P-178 is warranted because of his central role as being “at the origin of the letters written by P-169. P-178 was “the one who promoted the entire idea.”¹² The Defence misread the testimony of P-169. It is clear from P-169’s testimony that he was the one who wrote the letters, assisted by [REDACTED].¹³ At no point in time did he attribute authorship of the letters to P-178. On several occasions P-169 explained what he had meant by the allegations raised and the language used therein.¹⁴ It is clear from his testimony that he was prompted to write his letters because of [REDACTED].

14. The Defence attempt to re-introduce the argument on witnesses’ collusion is also without any merit. [REDACTED]¹⁵ [REDACTED].”¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED].¹⁹ The testimony of P-169 has established that there has been no collusion between witnesses.

15. The Defence’s argument to recall P-178 on the basis that he is [REDACTED] is also flawed. First of all, the Defence was already aware of the information, as stated above. P-169’s testimony did not change the information in that regard. Second, the fact that P-178 is [REDACTED] does not, in and of itself, form the basis for his recall. The evidence provided by P-169 on the subject reflects the accuracy of the information provided by

¹² ICC-01/05-01/08-3177-Conf, para.14.

¹³ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.18, line 7 to p.20, line 6; p.29 lines 7 to 16; p.30, lines 2 to 4; p.34, lines 4 to 9; p.61, lines 3 to 6.

¹⁴ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.32, line 5 to p.33, line 7; p.34, line 21 to p.35, line 9; p.36, line 5 to p.37, line 12; p.41, lines 4 to 11; p.44, lines 3 to 5; p.44, line 21 to p.46 line 1; p.54, lines 7 to 12.

ICC-01/05-01/08-T-362-CONF-ENG ET, 23 October 2014, p.9, line 14 to p.10, line 9; p.42, line 21 to p.43, line 7.

¹⁵ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.57, lines 3 to 10.

¹⁶ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.70, lines 6 to 12.

¹⁷ ICC-01/05-01/08-T-362-CONF-ENG ET, 23 October 2014, p.3, lines 14 to 23.

¹⁸ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.36, line 13 to p.37, line 16; p.66, lines 16 to 19; p.68, line 22 to p.69, line 15. ICC-01/05-01/08-T-362-CONF-ENG ET, 23 October 2014, p. 4 lines 4 to 17.

¹⁹ ICC-01/05-01/08-T-363-CONF-ENG ET, 24 October 2014, p. 11, line 21 to p.17, line 3.

the Prosecution to the Defence through its initial Filing 2827.²⁰ Recalling P-178 simply to have him confirm this information does not constitute good cause.

16. The request for the recall of P-178 on the basis of his relationship with [REDACTED] is groundless. The information was already available to the Defence through Filing 2827 prior to the Chamber's ruling. Moreover, the Defence speculates on the identity of this [REDACTED], theorising that [REDACTED] with the issue of the victims' Applications. The issue of the victims' applications has been properly addressed by the Chamber and is not directly related to the request for the recall of P-178. The Defence also seems to misinterpret the available information when it states that P-169 and P-178 held a steadfast belief that "it was their "right" to receive money from the ICC as a result of their testimony; a critical question in the assessment of the credibility of these two key Prosecution witnesses". [REDACTED].²¹

17. The Defence argument to recall P-178 in order to explore issues related to security should also be rejected. Issues related to witnesses' management and security fall within the VWU's mandate. It is WVU's prerogative to assess information available in order to make recommendations regarding safety and well-being concerns of witnesses. The VWU, as instructed by the Chamber, continues to monitor the situation of all relevant witnesses, including P-178.

18. The Defence argues that the recall is necessitated "as a further check on the general credibility of P-169". This argument is also flawed. The parties, and ultimately the Chamber, already have the information necessary to make a complete assessment of P-169's credibility.

²⁰ ICC-01/05-01/08-2827-Conf-Red2, para.9.

²¹ ICC-01/05-01/08-T-361-CONF-ENG ET, 22 October 2014, p.32, line 5 to p.33, line7.

19. In short, the Defence has not provided any ground justifying a recall of P-178. The existence of good cause has not been shown. Nor has the Defence demonstrated that compelling circumstances suggest that evidence of highly probative value may be obtained through the recall of P-178. Moreover, the Defence has not proven any substantial change, which would warrant the Chamber's reconsideration of a matter already adjudicated.

IV. Requested relief

20. For the above reasons, the Prosecution respectfully requests that the Chamber reject the Defence Request.



Fatou Bensouda, Prosecutor

Dated this 7th Day of November 2014
At The Hague, The Netherlands